IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.145 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant
Versus
C.S. HOTELS PVT LTD - Respondent

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Appearance :
MS MONA BHATT FOR MR MANISH R BHATT for Applicant.
NOTICE SERVED for Respondent – None Appeared.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 13/04/2006

ORAL JUDGMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The Income Tax Appellate Tribunal, Ahmedabad, has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961.

"Whether in the facts and in the circumstances, hotel building can be treated as plant and the assessee is entitled to depreciation on that basis as claimed?"

2. The assessee, i.e. M/s.C.S.Hotel Private Limited, was running a hotel in the name and style of "Karnavati". For the assessment year 1984-85, the assessee filed return declaring loss of Rs.12,11,289/-. However, the Assessing Officer determined the total income at Rs.47,720/- after making certain additions and disallowances. In the return, the assessee had claimed depreciation at the rate of 50% on the hotel building mentioning that the hotel building was 'plant'. The claim of the assessee was rejected by the Assessing Officer holding that the hotel could not be considered as plant. Feeling aggrieved, the assess preferred an appeal before the Commissioner of Income Tax (Appeals) who, in turn, directed the Assessing Officer to allow the depreciation relying on the decision of the Appellate Tribunal in the assessee's own case for the assessment year 1981-82 wherein the Tribunal had taken the view that the hotel building should be treated as plant. Thereupon, the Revenue preferred an appeal before the Tribunal. The Tribunal noticed that the issue involved in the appeal of

the Revenue was concluded by the earlier order of the Tribunal in the assessee's own case for the assessment year 1981-82 and, therefore, following the said order, the Tribunal upheld the order of the CIT (Appeals), giving rise to the instant Reference.

3. Though the assessee is duly served, it has neither appeared through its constituted agent nor through a lawyer. This Court has heard Ms.Mona M. Bhatt, learned counsel for the Revenue, at length and in great detail as well as considered the facts of the case.

4. The question whether a hotel building should be treated as plant so as to entitle the assessee to claim higher rate of depreciation is concluded by the decision of the Supreme Court in **Commissioner of Income Tax vs. Anand Theatres, 244 ITR 192.** After review of the law on the point, the Supreme Court has held as under:

> *"In the result, it is held that the building used for running of a hotel or carrying on cinema business cannot be held to be a plant because:*
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> *(1) The scheme of section 32 as discussed above clearly envisages separate depreciation for a building, machinery and plant, furniture and fittings, etc. The word "plant" is*

given inclusive meaning under section 43(3) which nowhere includes buildings. The rules prescribing the rates of depreciation specifically provide grant of depreciation on buildings, furniture and fittings machinery and plant and ships. Machinery and plant include cinematograph films and other items and the building is further given a meaning to include roads, bridges, culverts, wells and tube-wells.

(2) In the case of Taj Mahal Hotel [1971] 82 ITR 44, this Court has observed that the business of a hotelier is carried on by adapting building or premises in suitable way, meaning thereby building for a hotel is not apparatus or adjunct for running of a hotel. The court did not proceed to hold that a building in which the hotel was run was itself a plant, otherwise the court would not have gone into the question whether the sanitary fittings used in bath room was plant.

(3) For a building used for a hotel, specific provision is made granting additional depreciation under section 32(1)(v) of the Act.

(4) Barclay, Curle and Co.'s case [1970] 76 ITR 62, decided by the House of Lords pertains to a dry dock yard which itself was functioning as a plant that is to say, structure for the plant was constructed so that dry dock can operate. It operated as an essential part in the operations which took place in getting a ship into the dock, holding it securely and then returning it to the river. The dock as a complete unit contained a large amount of equipment without which the dry dock could not perform its function.

(5) Even in England, courts have repeatedly held that the meaning of the word "plant" given in various decisions is artificial and imprecise in application, that is to

use the words of Lord Buckley, "it is now beyond doubt that the word 'plant' is used in the relevant section in an artificial and largely judge-made sense." Lord Wilberforce commented by stating that "no ordinary man, literate or semi-literate, would think that a horse, a swimming pool, movable partitions, or even a dry-dock was plant."

(6) For the hotel building and hospital in the case of Carr v. Sayer 65 TC 15 (Ch.D.), it has been observed that a hotel building remains a building even when constructed to a luxury specification and similarly a hospital building for infectious diseases which might require a special layout and other features also remains a premises and is not plant.

It is to be added that all these decisions are based upon the interpretation of the phrase "machinery or plant" under section 41 of the Finance Act, 1971, which was applicable and there appears no such distinction for grant of allowance on different heads as provided under section 32 of the Income-Tax Act.

(7) To differentiate a building for grant of additional depreciation by holding it to be a "plant" in one case where the building is specially designed and constructed with some special features to attract the customers and a building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable.

Hence, the question is answered in favour of the Revenue and against the assessee by holding that building which is used as a hotel or a cinema theatre cannot be given depreciation as plant."

5. In view of the principles laid down by the

Supreme Court in the abovequoted decision, this Court is of the opinion that the hotel building of the assessee could not have been treated as plant so as to entitle the assessee to claim higher rate of depreciation. Therefore, the question referred to this Court for opinion is answered in the negative, i.e. in favour of the Revenue and against the assessee.

The Reference accordingly stands disposed of. There shall be no orders as to costs.

[J.M.PANCHAL, J.]

[BANKIM N. MEHTA, J.]

Rajendra